

Councillors Gifts & Benefits Policy

POLICY STATEMENT	<p>1.1 The Gifts and Benefits Policy is to provide guidance to Councillors regarding the issue of being offered or receiving gifts or benefits and compliments the requirements for gifts and benefits in Council’s Model Code of Conduct.</p> <p>1.2 The Policy also ensures that in dealing with any gifts, benefits or the offer of gifts or benefits that Councillors are not influenced in the performance of their duties and that there is no perception of undue influence due to these offers.</p>
DEFINITIONS	<p>2.1 Councillors – means a person elected to Council and includes the Mayor and Deputy Mayor</p> <p>2.2 Gift – is usually a tangible item provided at no charge. Gifts may include, but are not limited to items such as cash, property (real or otherwise), goods and services made available at heavily discounted prices, alcohol, clothes, products, invitations to social functions and tickets to sporting, theatrical or music events.</p> <p>2.3 Cumulative gift – a series of gifts of nominal value from the same person or organisation over a specified period which may have an aggregate value that is significant.</p> <p>2.4 Gift of influence – a gift that is intended to generally ingratiate the giver with the recipient for favourable treatment in the future</p> <p>2.5 Gift of gratitude – a gift offered to an individual or department in appreciation of performing specific tasks or for exemplary performance of duties. Gifts to staff who speak at official functions may be considered an example of gifts of gratitude.</p> <p>2.6 Benefit – a non-tangible item which is believed to be of value to the receiver (i.e. preferential treatment such as queue jumping, access to confidential information and hospitality)</p> <p>2.7 Hospitality – the provision of accommodation, meals, refreshments or other forms of entertainment.</p> <p>2.8 Bribe – a gift or benefit given specifically for the purpose of winning favours or to influence the decision or behaviour of a Council official to benefit someone or something.</p> <p>2.9 Cash – money or vouchers which are readily convertible</p> <p>2.10 Nominal value – is the monetary limit of the value of gifts or benefits that may be accepted (i.e. total value of gift or benefit received). A gift or benefit is of nominal value when it has no significant or lasting value in excess of \$50.00.</p> <p>2.11 Significant value – a gift or benefit that has a value above the nominal value limit.</p> <p>2.12 Token - usually have a value under the nominal value limit.</p> <p>2.13 Non token – items that are of a more individual nature, with a value above the nominal value limit. Items may include, free or discounted travel; use of holiday homes; corporate hospitality at major sporting events; free training excursions; tickets to major events and access to confidential information.</p> <p>2.14 Conflict of interest – any situation in which an individual or corporation (either private or government) is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit.</p> <p>2.15 Public perception – the perception of a fair-minded person in possession of the facts.</p> <p>2.16 Gifts and Benefits Declaration Form – a form to be completed (example template at attachment 1), when an individual receives a gift or benefit of a non-token nature above the nominal limit or receives a series of token gifts or benefits in a specified time that may have significant aggregate value (Cumulative Gift).</p>

	2.17 Gifts and Benefits Register – a register maintained by Council of all declared gifts and benefits (attachment 2).
OBJECTIVE	3.1 The Policy provides a clear understanding of Councillors’ responsibilities in relation to receiving or being offered gifts or benefits to ensure that the integrity of individual Councillors and Council as a corporation is protected as well as compliance with Council’s Code of Conduct.
SCOPE	4.1 The policy applies to all gifts and benefits offered to or received by Councillors in their role as officers of the Council.
PROCEDURE (POLICY DETAIL)	<p>5.1 General</p> <p>Councillors at all times and in all circumstances must be seen to be fair, impartial and unbiased.</p> <p>Council’s Code of Conduct “Gifts and Benefits” outlines the provisions in relation to Councillors being offered a gift or benefit.</p> <p>A breach of the clauses within the Code of Conduct will be treated as a breach of the Code of Conduct.</p> <p>Councillors should actively discourage offers of gifts and benefits and must not solicit gifts or benefits.</p> <p>Councillors must not take advantage of their official position to secure an unreasonable personal profit or advantage.</p> <p>People doing business with the Council should be encouraged to understand that they do not need to give gifts or benefits to Councillors to get high quality service.</p> <p>From time to time Councillors may be offered gifts or benefits. In some limited circumstances gifts and benefits may be accepted. Token gifts of nominal value may generally be received. Non – token gifts of significant value should not generally be accepted.</p> <p>Councillors should at all times be aware of the wider situation in which an offer of a gift or benefit is being made. For example, Councillors should consider whether the donor is in or may be seeking to enter into a business relationship with Council or may be applying to Council in relation to the exercise of Councils functions.</p> <p>Councillors must avoid situations that suggest that a person or body, through the provision of gifts or benefits is attempting to secure favourable treatment from Council.</p> <p>When deciding whether to accept or decline a gift or benefit, consideration should be given to both the value of the gift or benefit and also the intent of the gift or benefit being offered.</p> <p>5.2 Acceptable gifts and benefits</p> <p>Token gifts may be accepted by Councillors without disclosing details to the General Manager or Mayor and without recording the details of the gift or benefit on the Gifts and Benefits Declaration Form or Register (attachment 1 and 2).</p> <p>That said, Councillors who receive more than the specified number of token gifts of a nominal value from the same person or organisation, in a specified period must disclose that fact in the gifts and benefits register.</p> <p>If a Councillor has any doubt if a gift or benefit is token or of nominal value they should discuss it with the General Manager or Mayor.</p> <p>5.3 Non acceptable gifts and benefits</p> <p>Accepting gifts of cash, cash-like gifts (such as gift cards and vouchers) or credit is prohibited.</p>

Councillors should generally not accept gifts or benefits that appear to be non-token in nature or more than of a nominal value.

If a gift or benefit of a non-token nature or above nominal value is offered and cannot reasonably be refused (as this action may cause embarrassment), the offer and receipt of the gift or benefit must be declared via completion of A Gifts and Benefits Declaration Form (at attachment 1) and the details must be recorded on the Council Gift Register (at attachment 2).

If a Councillor refuses a gift or benefit because they believe that the gift was a deliberate attempt to receive “special treatment”, then such instances are to be reported to the General Manager or Mayor.

5.4 Non token gifts and benefits

At times a gift of a non-token nature may be given from one authority to another. Such gifts are often provided to a host authority. These gifts may be given as an expression of gratitude without obligation on the receiver to respond. The gratitude usually extends to the work of several people in the authority and therefore the gift is considered to be for the authority, not a particular individual.

5.5 Actual or perceived effect of the gift or benefit

Accepting gifts where a reasonable person could consider that there may be influence applied as a result of accepting the gift or benefit is prohibited. (gift of influence).

Where it is suspected that a gift or benefit has been offered for the purpose of influencing the behaviour of someone acting in their official capacity, the gift or benefit must be declined and the matter should be reported immediately to the General Manager or Mayor.

5.6 Bribes

Councillors must not offer or seek a bribe. A person offered a bribe should refuse it and report the incident as soon as possible to the General Manager or the Mayor. Council will take steps to report the matter to Police immediately.

Receiving a bribe is an offence under both the common law and Tasmanian Legislation.

5.7 Family members

Councillors must take all reasonable steps to ensure that immediate family members do not receive gifts or benefits of a non-token nature or gifts or benefits above the nominal value. Immediate family members include parents, spouses, children and siblings.

5.8 Records – Gifts and Benefits Registers

Councillors, who receive more than the specified number of token gifts or benefits from the same person or organisation, (cumulative gift) must disclose that fact on the Gifts and Benefits Declaration Form and Register. The specified number is included in 4.11

If a Councillor receives a non-token gift or benefit in circumstances where it cannot reasonably be refused or returned, the receipt of the gift or benefit should be disclosed and the details recorded on a Gifts and Benefits Declaration Form and in the Gifts and Benefits Register.

5.9 Disposal of gifts

The General Manager or Mayor will determine whether a gift or benefit of a non-token nature should be disposed.

There are options for the disposal of gifts that have been accepted because they could not reasonably be refused, but should not be retained by an individual. Examples of such circumstances where gifts or benefits may be received include:

- Gifts accepted for protocol or other reasons, where returning it would be inappropriate

	<ul style="list-style-type: none"> • Anonymous gifts (received through the mail or left without a return address) • A gift received in a public forum where attempts to refuse or return it would cause significant embarrassment. • A gift or benefit of significant value provided to a Council official through a Will, where the relationship between the giver and recipient was essentially a council related business relationship. <p>Options for disposal include:</p> <ul style="list-style-type: none"> • Surrendering the gift to Council for retention • Distributing the gift or benefit amongst a selection of Council’s officials - where a reasonable person would agree that the allocation was appropriate, (public perception). • Donating the gift to an appropriate charity. <p>5.10 Breaches of Model Code of Conduct</p> <p>All Councillors are obliged to comply with the Code of Conduct and sanctions may be applied if the policy is breached.</p> <p>Any person may lodge a complaint in accordance with the Code of Conduct for an alleged breach of the Code of Conduct to the General Manager.</p> <p>5.11 Detail of amounts and frequencies specified in the policy</p> <p>For the purpose of this policy the current nominal value limit is \$50.00</p> <p>Councillors who receive more than (three) nominal gifts of a token nature from the same person or organisation, in a six-month period must disclose that fact in the gifts and benefits register.</p> <p>5.12 Gifts and Benefits Register</p> <p>The General Manager will establish a Councillors’ Gifts and Benefits register. All offers of Gifts and Benefits that are reported or declared are to be recorded in the Gifts and Benefits Register.</p> <p>The Register must include:</p> <ul style="list-style-type: none"> • The date of the offer • The name of the intended recipient • The name of the person/organisation who offered the gift • The nature of the gift • The estimated value of the gift • Other relevant details (including details of refusal or return of gift or benefit) <p>The General Manager will review the Gifts and Benefits Register every three months to ensure compliance with this Policy and will liaise with the Mayor on the issue.</p> <p>In auditing the register, the General Manager will review the submissions of the previous six months and record on the register that they have done so. This will be dated and signed. Any comments or observations made by the General Manager should also be recorded on the register in the space available.</p> <p>The Register will be updated at least monthly and made available for public inspection at the Council Offices at 15 Channel Highway, Kingston and on Council’s website.</p>
<p>LEGISLATION</p>	<p>6.1 Local Government Act 1993</p> <p>Section 28ZI of the <i>Local Government Act 1993</i> states that the Code of Conduct Panel may impose one or more of the following sanctions on the councillor against whom a complaint is made:</p>

	<p>(a) a caution (b) a reprimand (c) a requirement to attend counselling or a training course (d) a suspension from performing and exercising the functions and powers of his or her office as a councillor for a period not exceeding 3 months.</p> <p>A third suspension may result in the councillor being disqualified as a councillor by the Minister.</p> <p>Section 339A of the <i>Local Government Act 1993</i> specifies penalties in relation to misuse of office by Councillors and employees.</p> <p><i>339A Misuse of office</i></p> <p>(1) A Councillor, an employee or a member must not procure the doing or not doing of anything by the council to gain, directly or indirectly, an advantages or to avoid, directly or indirectly, a disadvantage for –</p> <p>(a) the councillor, employee or member; or (b) a close associate of the councillor, employee or member; or (c) a member of the councillor’s, employee’s or member’s family.</p> <p>Penalty: Fine not exceeding 50 penalty units.</p> <p>(2) In addition to any penalty imposed under this section, a court may make an order–</p> <p>(a) barring the councillor from nominating as a candidate at any election for a period not exceeding 7 years; or (b) dismissing the councillor or member from office</p> <p>6.2 <i>Criminal Code Act 1924</i></p> <p>Section 83 of the <i>Criminal Code Act 1924</i> provides for Criminal action on behalf of public officers.</p> <p><i>83 Corruption of Public Officers</i></p> <p>Any person who –</p> <p>(1) being a public officer, corruptly solicits, receives, or obtains, or agrees to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything done or omitted, or to be done or omitted, by him in or about the discharge of the duties of his office; or</p> <p>(2) corruptly gives, confers, or procures, or promises or offers to give, confer, or procure, or attempt to procure, to, upon, or for any public officer, or any other person, any property or benefit of any kind on account of anything done or omitted, or to be done or omitted, by such office in or about the discharge of the duties of his office – is guilty of a crime.</p> <p>6.3 Councillors are considered ‘public officers’ under the <i>Criminal Code Act 1924</i> which has provision for the imposition of severe penalties, including imprisonment.</p>
COMMUNICATION	<p>7.1 Kingborough Councillors are informed of this Policy.</p> <p>7.2 A copy of this Policy is available from the Civic Centre or can be accessed on Council’s website.</p>
RELATED DOCUMENTS	<p>8.1 Council’s Code of Conduct.</p>
AUDIENCE	<p>9.1 Kingborough Councillors</p> <p>9.2 Community</p>